

AUG - 7 1990

STATE OF MAINE
BEFORE THE GRIEVANCE COMMISSION

File Numbers:

89-S-22
89-S-16
89-K-3
89-S-186
89-S-100
89-S-120
89-S-35

BOARD OF OVERSEERS OF THE BAR,

Petitioner

v.

KRISTINA JOYCE SMITH,

Respondent

**DECISION AND DISPOSITION
OF GRIEVANCE PANEL D**

On June 22, 1990, Panel D of the Grievance Commission conducted a full day of hearings in connection with the above cases. The Panel was composed of William F. Hufnagel, Esq., Chairman; Professor Craig A. McEwen, and Charles H. Abbott, Esq.

The Petitioner was the Board of Overseers of the Bar represented by Bar Counsel J. Scott Davis, Esq. The Respondent appeared without counsel, but actively participated in the defense and cross-examined all witnesses. The Petitioner presented the sworn testimony of numerous witnesses including the Respondent and introduced over forty exhibits, which the Panel received without objection.

The seven cases all arose from Complaints filed during 1989 by various individuals with the Board of Overseers of the Bar.

FINDINGS OF FACT AND CONCLUSIONS

I. File No. 89-S-22 (Kelley Cheney).

Ms. Cheney was represented by Respondent for some four months. The initial contact was made on October 7, 1988, and a Divorce Complaint was typed while the client was in the office. The Complaint and related documents were served on the husband on October 12, 1988, and the Respondent appeared with Ms. Cheney at Court on a motion pending on November 4, 1988. Permission to file late answer was granted to the attorney for the husband on November 23, 1988, and a Request for Mediation was set on January 5, 1989. Shortly thereafter Cheney terminated the services of Respondent complaining of unanswered telephone calls and inattention to the file. The \$100.00 retainer was the only amount received by the Respondent.

It is the opinion of the Panel that there was not neglect of the file. There was a failure to return telephone calls and Respondent should be more sensitive to the fact that such action could result in discipline but the circumstances of this case justifies dismissal without discipline.

II. File No. 89-S-16 (Marie Barnes).

Ms. Barnes and her husband retained Respondent in May, 1988, in connection with problems with a Chevrolet Blazer vehicle and later with matters related to an adoption.

As to the Chevrolet Blazer, Ms. Barnes presented Respondent with an arbitration award which should have been responded to within ten days. The Respondent apparently failed to read the award with care and did nothing within the ten-day period. Both

Ms. Barnes and another attorney whom she subsequently retained complained of failure of Respondent to return telephone calls or to answer correspondence.

The Respondent candidly admitted that her case load was unusually heavy in the Spring of 1988. Her case load had been four hundred or more prior to May 1, 1988, during which period she was associated with Casco Legal Clinic. She established the firm of Johnson & Joyce in Westbrook on May 1, 1988, and felt that her case load gradually dropped to approximately three hundred. However, the press of establishing a new office and reducing her immense case load apparently resulted in inattention to this particular file. Respondent also asserts that she never really undertook to represent Ms. Barnes and, in fact, was not competent in this area of law. Nonetheless, the Panel finds that she did represent Ms. Barnes at all material times.

Ms. Barnes also feels that the Respondent was not truthful when she said that she had communicated with General Motors Corporation and an office of the Better Business Bureau. However, in the absence of direct negative testimony, the Panel is unable to reach a conclusion concerning the truth of this particular allegation.

In connection with the matter involving the Chevrolet Blazer, the Respondent neglected the file to the detriment of the complaining witness and failed to communicate with her for which a reprimand should issue.

The Respondent admits an error was made in submission of the adoption papers, but that error was remedied as soon as it was called to Respondent's attention by Ms. Barnes.

It is the conclusion of the Panel that the complaint relative to the adoption should be dismissed.

III. File No. 89-K-3 (Sheila Adams).

The Respondent was engaged by Ms. Adams in a post-divorce matter seeking increased child support. This is another instance in which Respondent feels that she was not actually representing the Claimant and yet did not make that clear to Claimant and did substantial work for Claimant. Respondent initially agreed to send a letter to the husband and did so on June 27, 1988. However, the letter was improperly addressed and not received by the husband until two months had elapsed. In October, 1988, Ms. Adams asked Respondent to pursue the matter and to go to Court against the former husband. A letter was received from the husband's attorney on November 9, 1988, and properly sent to Ms. Adams. However, the Respondent did nothing to pursue the matter and a Complaint was registered by Ms. Adams dated December 29, 1988.

Respondent again candidly admitted that she simply had too many cases during the Summer of 1988. She was constantly in Court or in mediation sessions and found that she did not and could not return telephone calls.

It is the conclusion of the Panel that the Respondent failed to keep her client informed and neglected the matters entrusted to her by Ms. Adams. A reprimand should issue.

IV. File No. 89-S-186 (Reahna Tibbetts).

Respondent was hired by Reahna Tibbetts in July, 1988, in connection with a divorce and a bankruptcy. Ms. Tibbetts com-

plaints of dilatory treatment on the part of the Respondent with respect to both the divorce and the bankruptcy.

The Divorce Complaint was filed on July 29, 1988. Little occurred over the next several months, but this was attributable to the fact that the husband disappeared and caused mediation to be delayed. In the meantime, initial bankruptcy schedules had been delivered to the Respondent by Ms. Tibbetts in the Spring of 1989. The divorce finally came on for hearing on August 15, 1989, and, on that date, the Respondent and Ms. Tibbetts sat down together to put the bankruptcy schedules into final form. The Petition and related documents were signed in blank with the understanding that they would be sent to Ms. Tibbetts for her review and approval prior to being filed with the Court.

Ms. Tibbetts complains of repeated telephone calls which went unanswered. On October 27, 1989, Ms. Tibbetts called the office of the Respondent directing the Respondent not to file the bankruptcy schedules. The bankruptcy schedules had been typed by then and were eventually signed by the Respondent on November 2, 1989 in anticipation of hearing from Ms. Tibbetts. The grievance was filed on November 9, 1989.

It is the conclusion of the Panel that although regrettable, the delay in the processing of the divorce was not unreasonable given the fact that the husband disappeared and the husband's attorney was reluctant to proceed with mediation in the absence of specific directions from his client. Even when mediation was held, the same attorney was reluctant to agree to an uncontested divorce in the absence of his client. Thus the Respondent and

her client had to wait for a contested hearing date which accounts for the delay until August 15, 1989. Furthermore, the hearing was also delayed because of the necessity of obtaining approval of the Department of Human Services concerning the child support provisions.

As to the bankruptcy, the Panel finds no neglect of the file.

The Panel is concerned with the failure of Respondent to promptly answer telephone inquiries from Ms. Tibbetts. This is a common theme which runs throughout the seven cases, but the circumstances of this case justify dismissal without discipline.

V. File No. 89-S-100 (Pamela Sjulander).

In March, 1987, Ms. Sjulander retained Respondent in connection with her divorce. The divorce was concluded without incident on July 30, 1987, but, almost immediately, post-divorce problems arose. One of the conditions of the divorce was that Ms. Sjulander pay her former husband a sum of money within a particular period of time. Upon her failure to do so, the husband stopped making periodic payments as required by the Order. As a result, an Order to sell the property was issued on April 21, 1988. Eventually, Ms. Sjulander, through the efforts of her parents, was able to raise sufficient money to purchase the home. However, in doing so, she was forced to pay \$4,000.00 in connection with a delinquent mortgage payment which should have been paid by the former husband.

Ms. Sjulander also complains of repeated telephone calls which went unanswered and failure to properly pursue the former

husband in connection with the obligations imposed upon him by the divorce judgment.

Ms. Sjulander also complains about the Respondent's failure to communicate with the Internal Revenue Service concerning earned income by the former husband, despite repeated promises by the Respondent. The Panel finds that the Respondent did not make the calls, but that it was immaterial to the divorce action.

Finally, the Panel is troubled by repeated instances throughout the cases in which the Respondent would write to a client in her own handwriting or as a result of her own typing. In every instance these critical letters were undated, leaving open the interpretation that the letters were prepared subsequent to the filing of the Complaint in order to paper the file. Such an instance appears in this case in connection with an undated letter to Ms. Sjulander purportedly enclosing the Motion to Enforce. Ms. Sjulander testified that she never received the letter and seriously doubts that she ever saw the Motion to Enforce prior to the time that the Order to sell the home was issued.

The Respondent addressed the Panel, expressed regret, and indicated that it would be indeed unfortunate if Ms. Sjulander had been damaged as a result of anything that the Respondent had done.

It is the conclusion of the Panel that the matters entrusted to Respondent by Ms. Sjulander were neglected, and that there was a failure to regularly communicate with the client and to respond to legitimate inquiries. Respondent should be reprimanded for these rule violations.

VI. File No. 89-S-120 (Regena Methot).

Regena Methot retained Respondent in October, 1988, in connection with a divorce. The divorce appeared to have been processed relatively expeditiously. The divorce Complaint was signed on October 14, 1988; the motion pending and Complaint was served on November 2, 1988, and a hearing on the motion pending was held on November 28, 1988. At that same time there was a meeting between the husband, wife and counsel with a broad agreement as to the terms of property division.

The Order pending issued on January 3, 1989, and, for the next few weeks, Respondent inquired into the status of the husband in connection with the family corporation and worked on the draft of the agreement. For some unexplained reason, the draft of the divorce agreement was sent to the husband on March 23, 1989, and to Ms. Methot on the next day.

Despite the fact that Ms. Methot's marriage was only of short duration, and there were no children of the marriage, she insisted upon alimony despite the strong recommendation of the Respondent that it would not be granted by any Court. In May Respondent suggested that Ms. Methot seek another opinion concerning alimony and the representation ceased.

It is the opinion of the Panel that there was no neglect of the file. There were failures of communication and failures to respond to legitimate inquiries, but they do not constitute neglect under the circumstances of this case. It is the opinion of the Panel that the case should be dismissed.

VII. File No. 89-S-35 (Emil J. Galassetti).

The late Emil J. Galassetti complained against Respondent in March, 1989, for inattention to his divorce matters. It is the position of the Respondent that Mr. Galassetti was totally opposed to the judgment of the Court and was an uncooperative client. Unfortunately, Mr. Galassetti is now dead and the Panel did not have the benefit of his testimony. One of the exhibits included a letter of March 30, 1989, from Mr. Galassetti to Respondent complaining that he had heard nothing about the case. However, the return of service indicates that he had been served with a Motion for Contempt twenty-two days prior to that letter.

This case also presents the disturbing scenario of two undated letters from Respondent to the late Mr. Galassetti which again could lead one to infer that they were manufactured after the death of Mr. Galassetti. Nonetheless, on the strength of the evidence presented, the Panel is unable to say that there was neglect of the file and the case is dismissed.

CONCLUSION

Based upon the totality of these cases, the Panel finds that there has been neglect of cases and a failure to keep clients adequately informed as to the status of their cases. Respondent has therefore violated Maine Bar Rules 3.6(a) 2 and 3.


DISPOSITION


The Panel believes that reprimands are warranted as set forth above under each separate file number. The Respondent is hereby reprimanded as set forth above. Bar Counsel shall forward

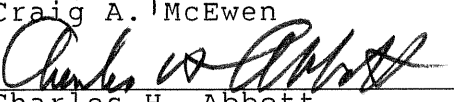
a copy of this Decision to Respondent and shall file it with the Board of Overseers of the Bar. The Panel has evaluated and imposed discipline in these cases based on the merits of each case and in light of the pattern of misconduct. We have also evaluated carefully Bar Counsel's argument that the pattern of misconduct itself requires even more severe discipline. This might be the case if Respondent had not acknowledged the underlying problems and already taken substantial steps to change her practice in order to prevent future difficulties.

Respondent is urged to summarize in writing the steps which she has taken and will continue to take to address the various issues raised in these hearings. This would include, without limitation, an outline of Respondent's present case load, office procedures including a docket control system, and procedures for replying to client inquiries. Respondent is further encouraged to file this summary with the Board of Overseers as a token of her good faith effort to avoid a repeat of circumstances leading to discipline in the above cases.

Dated: July 31, 1990



William F. Hufnagel


Craig A. McEwen


Charles H. Abbott

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